

April 28, 2016

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**BY ELECTRONIC and U.S. MAIL**

Mr. Juan M. Fajardo  
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17<sup>th</sup> Floor  
290 Broadway  
New York, NY 10007

Ms. Sarah P. Flanagan  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region II  
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290 Broadway  
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Re: Diamond Alkali Superfund Site - Lower 8.3 Miles of the Lower Passaic River  
Essex and Hudson Counties, New Jersey

Notice of Potential Liability under 42 U.S.C. § 9607(a)

Commencement of Negotiations for Remedial Design

Dear Mr. Fajardo and Ms. Flanagan:

Covanta Essex Company, successor in interest in this matter to American Ref-Fuel Company of Essex County, Inc. (collectively “Covanta”) is in receipt of USEPA Region II’s Notice of Potential Liability under 42 U.S.C. §9607(a) for the Diamond Alkali Superfund Site – Lower 8.3 Miles of the Lower Passaic River dated March 31, 2016. Kindly accept this letter as a response to the notice letter. Covanta plans to participate in the process to resolve this matter.

Covanta’s involvement in this matter stems from its 2005 acquisition of the American Ref-Fuel facility located at 183 Raymond Boulevard in Newark, NJ. Covanta does not own nor did it ever own the land on which the facility is located. Covanta constructed, owns and operates the facility under a lease agreement with the Port Authority of New York and New Jersey. The facility operates on a zero-discharge basis. The only discharges associated with the site are from

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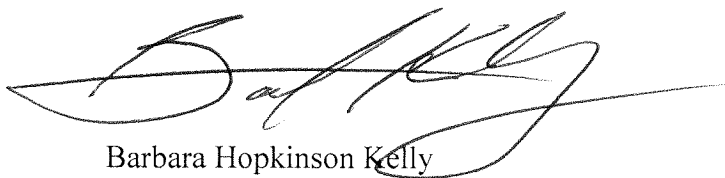
two drainage ditches which, in addition to draining the site, drain a large, highly industrialized area above the site. There is little or no evidence to suggest that Covanta's operations contributed to the contaminants identified in the Record of Decision as driving the risk to human health and the environment risk or the cost of the selected remedy.

To date, Covanta has cooperated with USEPA in assessing and addressing emergent conditions in the Lower Passaic River Study Area ("Study Area"). Covanta was a signatory to previous consent agreements with the USEPA and participated with the Cooperating Parties Group to fund various activities at the Study Area, including the Mile 10.9 removal action and the RI/FS for the entire Study Area.

Although Covanta's nexus to this matter is *de minimis* at best, Covanta is willing to engage in expedited *de minimis* settlement discussions with USEPA in order to resolve this matter. As stated in Covanta's recent letter to Mr. Eric Schaff, USEPA Region II Regional Counsel, joining in the G-10 member's call for expedited *de minimis/de micromis* settlement talks, Covanta is prepared to participate with the USEPA and other similarly situated parties to develop a viable cash out settlement process. Covanta is further prepared to show that the alleged historical releases from the site are not driving the risk to human health and the environment identified in the ROD and did not contribute to the contaminants of concern driving the costs of the selected remedy. Covanta makes this offer to participate in the process without admitting to any liability in this matter and reserves all its defenses and rights to contest any alleged liability under CERCLA or other applicable law. We look forward to working with USEPA to resolve this matter.

Very truly yours,

Wilson Elser Moskowitz Edelman & Dicker, LLP



Barbara Hopkinson Kelly

cc: Nancy Tammi (Covanta)